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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 263

THE UNITED STATES OF AMERICA and THE SECRETARY OF COMMERCE, as Successor of the Chairman of the United States Maritime Commission,

Petitioners,

v.

CALIFORNIA EASTERN LINE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

THE QUESTIONS PRESENTED

Expressed in the terms and circumstances of the case, without unnecessary detail, the questions presented for review in this proceeding are:

1. Whether a final order and decision of The Tax Court of the United States, determining after a hearing conducted pursuant to Section 403(e) of the Renegotiation Act of 1942, as amended, 50 U. S. C. App. §1191(e), that the only contract involved was not in fact a contract with

any of the "Departments" named in the Act and is not covered by the Act, is subject to direct review by any other court or agency, upon the petition of the Government.[1]

2. If it is reviewable, which respondent denies, whether it is reviewable *directly* by the United States Court of Appeals for the District of Columbia Circuit.

3. Whether the petition for review filed in this case was correctly dismissed by the Court of Appeals.

Statement of the Case.

The following statement of the case contains, in the opinion of respondent, all that is material to the court's consideration of the above questions:

(a) *The Basic Facts.*

The controlling facts, stipulated by the parties and found by the Tax Court as stipulated (R. 279), are the same as those considered by this Court in *Macauley* v. *Waterman S. S. Corp.*, 1946, 327 U. S. 540.

California Eastern Line, Inc., the respondent herein, is a corporation organized under the laws of Delaware, and has its principal office in Vancouver, Washington. Effective March 16, 1942, it acquired all the assets and assumed all the liabilities of an Oregon corporation of the same

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[1] Throughout this brief, unless otherwise specified, the terms "Renegotiation Act" and "the Act" refer to the Renegotiation Act of 1942, as amended (Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public 528, 77th Congress), approved April 28, 1942, as amended by Section 801 of the Revenue Act of 1942 (Public 753, 77th Congress), approved October 21, 1942; by the Military Appropriation Act, 1944 (Public 108, 78th Congress), approved July 1, 1943; and by Public 149, 78th Congress, approved July 14, 1943.)

name. For convenience, the term "respondent" when used herein refers to the Oregon corporation as to all events occurring before March 16, 1942, and to the Delaware corporation as to all events occurring thereafter (R. 39).

Respondent owned an American-flag steamship called the *Vermont*, which it normally operated for its own account in the United States intercoastal trade (R. 41). However, by an agreement in writing dated May 29, 1941, respondent as owner of the *Vermont* entered into a contract (designated therein and hereinafter referred to as a "charter") with the British Ministry of War Transport, an agency of the British Government. The charter (Ex. A, R. 15) stated that it was an agreement "between CALIFORNIA EASTERN LINE, INC. Owners of the Steamship *Vermont* • • • and BRITISH MINISTRY OF WAR TRANSPORT Charterers". It was executed for and on behalf of respondent and the British Ministry of War Transport by their duly authorized representatives (R. 16-24, 39-40, 51).

The charter[2] provided, among other things, as follows:

> 1. That the said steamship • • • shall load at not more than two United States Atlantic Coast ports, north of Cape Hatteras, but not east of Portland, Maine, according to custom of port, a cargo of lawful merchandise, which Charterers shall furnish subject to Clause 25, and being so loaded shall therewith proceed as ordered when Bills of Lading are signed to not exceeding two ports of discharge in the Gulf of Aden and the Red Sea range not beyond Suez, or so near thereunto as she may safely get, and there,

[2] The form of charter party executed by respondent and the British Ministry of War Transport was a standard form of charter approved by the Maritime Commission on May 29, 1941, "for use by private owners of American-flag vessels in chartering their vessels to the British Ministry of War Transport" (Exhibit 40, R. 95-98). The charter considered by this court in the *Waterman* case was on the same form.

> always afloat, deliver the cargo as customary, at such wharf, dock or other good and safe place as Charterers' Agents may direct on arrival, in consideration whereof Charterers shall pay the vessel freight as follows:
>
> * * * * * *
>
> 28. This charter not to become effective until approved by the United States Maritime Commission. If any dispute arises under this charter the same is to be settled by the United States Maritime Commission.

After the charter was signed by the parties, it was forwarded to Washington for approval by the Maritime Commission, as required by Clause 28. There it was "approved" by G. H. Helmbold, who, as Director of Operations and Traffic of the Maritime Commission, was authorized by the Commission to approve such charters "on behalf of the Commission." Such authority was granted to Helmbold in a special resolution adopted by the Commission at a meeting held in Washington on May 29, 1941 (Exhibit 40; R. 40, 95-98). The resolution, among other things, provided:

> RESOLVED, FIRST, that the form of charter annexed hereto be, and the same is hereby approved, for use by private owners of American-flag vessels in chartering their vessels to the British Ministry of War Transport * * *
>
> RESOLVED, SECOND, that approval of specific charters under Clause 28 thereof with respect to voyages thereunder, now or hereafter arranged for by the Commission, may be given on behalf of the Commission by (1) the Director of Operations & Traffic [Mr. G. A. Helmbold] * * *
>
> * * * * * *

RESOLVED, FIFTH, that the approval of the Maritime Commission as required by Sections 9 and 37 of the Shipping Act, 1916, as amended, be and is hereby granted for the charter of privately-owned American flag vessel to the British Ministry of War Transport, on condition that said charter shall be approved as authorized by RESOLVED SECOND hereof, and upon the further condition that said vessels may not be sub-chartered to aliens under this approval;

The *Vermont*, having loaded the cargo furnished to her at the port of New York by the British Ministry of War Transport, sailed on May 29, 1941, and proceeded as ordered by the charterers to Port Sudan, a port in the Red Sea Range, and there delivered her cargo as directed by the charterers' agents. Delivery of the cargo at Port Sudan was completed on August 8, 1941 (Jt. App. 40).

Meanwhile, on June 23, 1941, respondent received full payment of the agreed freight payable by the charterers, in the sum of $336,577. Said freight was paid to respondent by the Maritime Commission from lend-lease funds, pursuant to an inter-governmental arrangement between the Office for Emergency Management, an agency of the United States Government, and the British Merchant Shipping Mission, another agency of the British Government, "with respect to payments required to be made by the British Ministry of War Transport under the form of charter party prepared by the Maritime Commission" for use in the proposed Red Sea service. Under the terms of said inter-governmental arrangement, which was set forth in a letter dated June 9, 1941, from Major General J. H. Burns of the (U. S.) Office for Emergency Management, to the British Merchant Shipping Mission, it was agreed *between the two governments* that—

> a. The United States Maritime Commission will make the following payments required to be made to the owners or chartered owners by the British Ministry of War Transport under the terms of the charter: • • •

Respondent was not a party to this inter-governmental arrangement, nor was it consulted by either government as to its terms and conditions (Exhibit 48: R. 40, 105-106).

Subsequently, on July 31, 1942, respondent received a payment of $14,700 on account of demurrage; and, on November 4, 1942, a payment of $295.78, on account of crew's overtime. These amounts, also payable by the charterers, were in each instance paid by the Maritime Commission from lend-lease funds, pursuant to the aforesaid inter-governmental arrangement (R. 40-41).

(b) *The Renegotiation Proceedings.*

On November 29, 1943, respondent received a letter from the Maritime Commission, dated November 27, 1943, signed "John R. Paull, Price Adjustment Board," and captioned: "Subject: *Notice of Initial Conference under the Renegotiation Act which shall constitute Commencement of Renegotiation*" (Ex. 2; R. 41, 51-53).

In said letter respondent was informed that Price Adjustment Boards had been established in the War, Navy, and Treasury Departments, the Maritime Commission, the War Shipping Administration, and the Reconstruction Finance Corporation, pursuant to the Renegotiation Act; that renegotiation of respondent had been assigned to the Commission's Price Adjustment Board; and that "an initial conference" with the Board had been set for December 20, 1943, in Washington, D. C. Respondent was requested to furnish the Board with a detailed breakdown of its income

and expenses during the calendar years 1941 and 1942, with special reference to the charter of the *Vermont*.

Respondent immediately challenged the Commission's right to renegotiate the profits it had derived from its charter with the British Ministry of War Transport, on the ground that the charter was a contract *with a foreign government,* not with the Maritime Commission or any other Department named in the Renegotiation Act. Respondent asserted, moreover, that it had not derived any excessive profits under the charter, but, even if the charter were a contract with the Maritime Commission, the contract would be exempt from renegotiation by the Commission—*first*, because "final payment" pursuant to the contract was made prior to April 28, 1942, and, *second,* because the proposed renegotiation proceeding had been commenced more than one year after the close of respondent's fiscal year within which "completion" of the contract occurred. All of these objections were overruled, however, and the Commission's Price Adjustment Board declared its intention to proceed with the renegotiation, asserting that the charter was *in fact* a contract with the Maritime Commission and, therefore, subject to renegotiation by the Chairman.

At about the same time, similar notices of initial conferences were sent to other shipowners who had chartered their vessels to the British Ministry of War Transport. One of these was Waterman Steamship Corporation, who, when it became apparent that the Commission could not be persuaded to discontinue the proposed renegotiation of its charters to the British Ministry of War Transport, filed a complaint against the Chairman of the Commission, in the United States District Court for the District of Columbia. This was the complaint which was later to be

considered by this Court in *Macauley* v. *Waterman S. S. Corp.*, 327 U. S. 540. Respondent filed a similar action in the District Court, but did not press its case pending a final decision in the *Waterman* case. When this Court determined that the District Court had properly dismissed Waterman's complaint for want of jurisdiction, because Waterman had not exhausted the administrative remedies provided for in the Renegotiation Act, respondent voluntarily discontinued its action in the District Court.

The Commission then proceeded with the renegotiation of respondent's charter with the British Ministry of War Transport, and on March 31, 1949, Admiral W. W. Smith, then Chairman of the Maritime Commission, issued and entered a unilateral order determining that respondent had realized excessive profits "under a contract with the Departments, as defined in the Renegotiation Act" (Ex. 3; R. 15-16, 53-54). Counsel for the parties to this proceeding have stipulated and agreed that "the aforesaid charter is the specific contract referred to in (the Chairman's) said order," and that said charter "was the only charter which (California Eastern Line, Inc.) signed with the British Ministry of War Transport for a voyage to the Red Sea area during 1941 or 1942" (Stipulation of Facts, pars. 10 and 15; R. 41-42).

(c) *The Tax Court Proceedings.*

Respondent, being aggrieved by the Chairman's unilateral determination of March 31, 1949, thereupon petitioned the Tax Court, under authority of Section 403 (c)(2) of the Renegotiation Act of 1943, for a redetermination of whether the profits it realized under the charter with the British Ministry of War Transport were subject to renegotiation under authority of Section 403 (c) (1) of the 1942 Act; and, if so, the amount (if any) of its excessive profits.

In its petition to the Tax Court (R. 4-24) respondent alleged, and asked the Tax Court to determine, that the Chairman of the Maritime Commission was not authorized by Section 403(c)(1) of the Act to renegotiate respondent's contract with the British Ministry of War Transport, because it was a contract only with a *foreign government*, not with the Maritime Commission or any other "Department" as defined in Section 403 (a) of the Act; that, even if the charter were a contract with one of the Departments named in the Act, it would be exempt from renegotiation, because (a) the "final payment" pursuant to the contract had been made prior to April 28, 1942, and (b) the purported renegotiation proceeding had not been commenced within one year after the close of respondent's fiscal year 1941, during which the "completion or termination" of the contract occurred; and finally, that no portion of the profits realized under the contract was "excessive" within the meaning of the Act.

When an answer was filed on behalf of the Chairman, respondent moved for, and the Tax Court granted, a severance of the so-called "coverage issues" (R. 25-31, 38). These issues, as stated in the "Agreed Statement of Issues and Stipulation of Facts" submitted to and accepted by the Court (R. 38, 182) were:

> (a) Was the charter dated May 29, 1941, between the petitioner and the British Ministry of War Transport a contract, or a subcontract thereunder, with a "Department" as defined in Section 403 (a) of the Renegotiation Act of 1942, as amended?
>
> (b) Was the final payment pursuant to said charter, within the meaning of Section 403 (c) (6) of the Act, made prior to April 28, 1942?
>
> (c) Was the renegotiation proceeding involved herein commenced by the respondent within one year

after the close of the fiscal year of the petitioner within which completion or termination of said charter occurred, within the meaning of Section 403 (c) (6) of the Act?

(d) Was the charter subject to renegotiation?

As the Tax Court pointed out in its Findings of Fact and Opinion, a determination of any of these issues in respondent's favor "obviates consideration of those remaining, and requires decision for" respondent (R. 279).

A formal hearing with respect to these agreed "coverage issues" was conducted by Judge Raum on March 16, 1951, who, after hearing both sides, reserved decision not only on the merits of the controversy, but also as to the admissibility of certain exhibits.

On February 1, 1952, Judge Raum entered a formal order with respect to the disputed exhibits, admitting some but excluding others, and on February 15, 1952, the Tax Court promulgated its Findings of Fact and Opinion, written by Judge Raum but "reviewed by the Court," in which the Court, after weighing all of the evidence (including the *excluded* exhibits) and making numerous subsidiary findings of fact, found as ultimate facts that:

> The charter of the *Vermont* was neither a contract with the Commission or with any other department named in the Renegotiation Act, nor a subcontract under such a contract. The contract contained in that charter was only between petitioner and the Ministry of War Transport, acting for the British Government. The Commission did not intend itself to be a party to that contract or to be the charterer of the *Vermont*. In entering into that contract and in chartering the *Vermont*, neither the British Government nor the Ministry of War Transport acted as agent for the Commission (R. 288).

Later, in his opinion (R. 289-300), Judge Raum said:

> (The Government's) contention, that the British Ministry acted as the Commission's agent and that the Commission was the charterer of the *Vermont*, is based on the facts that the Commission negotiated the terms and form of the charter, exercised supervision over performance under the charter, and, in behalf of the United States Government, furnished the funds and controlled payment under the charter. We think it does not necessarily follow, under the Renegotiation Act, that these circumstances stamped the charter as being a contract with the Commission. The question of fact remained whether on the entire evidence the charter was such a contract. As the repository of these very important powers, the Commission might have chosen in some circumstances to charter the Vermont itself, making all other arrangements substantially the same as it did here, and to undertake transportation of the British cargo to the destinations at which it was required. Whatever the reasons may have been, whether because of lack of authority or because of restrictions on its action which exigencies of the international situation then imposed on the United States as a non-belligerent, the fact is that the Commission avoided selection of this course. It chose rather that in which the British Ministry was the charterer and in which the contract was with the British Ministry; to itself the Commission relegated the function of making the arrangement and tending to other matters in a way which would make it possible for the British Ministry to charter the *Vermont*. The contract in fact was, and was intended to be, with the British Ministry and not with the Commission. Cf. *Waterman S.S. Corporation* v. *Land*, 151 F. 2d 292, 293-296 (C. A. D. C.), reversed on other grounds, sub. nom. *Macauley* v. *Waterman S.S. Corp.*, 327 U. S. 540; *Alabama* v. *King & Boozer*, 314 U. S. 1, 13; *United*

States v. *Algoma Lumber Co., supra; Farm Security Administration* v. *Herren, supra.*

Then, pursuant to its Findings of Fact and Opinion, the Tax Court entered a formal decision on February 26, 1952, as follows (R. 302):

> Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, promulgated February 15, 1952, it is
>
> ORDERED and DECIDED: That there is no renegotiable contract within Section 403(c)(1) of the Renegotiation Act.

(d) *The Court of Appeals' Proceedings.*

The administrative process prescribed by the Renegotiation Act having been completed, by the entry of the aforesaid final order and decision of the Tax Court, the petitioners, purporting to proceed under Sections 1141 and 1142 of the Internal Revenue Code, 26 U. S. C. A. 1141 and 1142, thereupon initiated this judicial proceeding by filing with the United States Court of Appeals for the District of Columbia Circuit a petition for review (R. 302-305), praying that the Court of Appeals review the decision of the Tax Court and that the same "be reversed." (R. 305)

Article V of the petition for review alleged that the Tax Court committed error in the following respects:

> (a) In deciding that pursuant to the determination of the Court set forth in its Findings of Fact and Opinion, respondent-appellee had no renegotiable contract within Section 403(c)(1) of the Renegotiation Act.
>
> (b) In finding and holding that the contract involved herein was neither a contract with the United States Maritime Commission or with any other department named in the Renegotiation Act.

(c) In finding and holding that the contract involved herein was a contract between respondent-appellee and the Ministry of War Transport, acting for the British Government.

(d) In finding and holding that the United States Maritime Commission did not intend itself to be a party to the contract involved herein or to be the charterer of the vessel *Vermont* under such contract.

(e) In finding and holding that neither the British Government nor the Ministry of War Transport acted as agent for the United States Maritime Commission in entering into the contract involved herein or in chartering the vessel *Vermont*.

(f) In issuing its order dated February 1, 1952, in which it was ordered that respondent-appellee's objections to the admission in evidence of petitioner on review's Exhibits G and H were sustained, and that Exhibits G and H are not admitted in evidence.

(g) In failing to find and hold that it was the intention of both the United States Maritime Commission and the British Ministry of War Transport that the British Ministry of War Transport act as an agent of the United States Maritime Commission in signing the contract involved herein.

It should be noted that the alleged errors fall into three groups. Error (a) is undoubtedly a mere formal allegation, for the Government cannot suggest that, if the Tax Court's findings of fact are correct, the charter is subject to renegotiation. There was no authority whatsoever for the Chairman of the Maritime Commission to renegotiate the profits realized by an American corporation from a contract with an agency of a foreign government, even though the contract price was paid from lend-lease appropriations.

Errors (b), (c), (d) and (e) clearly relate to the Tax Court's *findings of fact,* which are certainly not subject to review in a renegotiation case. Similarly, error (g) relates to *an issue of fact,* since it merely represents the negative of errors (b), (c), (d) and (e); and error (f) pertains only to an alleged error in a ruling upon a disputed question of evidence.

After a hearing on the record from the Tax Court, the Court of Appeals held, in an opinion by Judge Prettyman (R. 335-339), that the petition for review "must be dismissed for lack of jurisdiction," and ordered, that "the petition for review in this case be, and the same is hereby, dismissed for lack of jurisdiction" (R. 340). Petitioners promptly moved for a rehearing of the issues by the entire court, sitting *en banc,* on the ground that the court's decision was inconsistent with all prior decisions of the court; but the court, sitting *en banc* (with the exception of Chief Judge Stephens who did not participate) denied the motion (R. 341). This action may reasonably be taken to indicate that the Court of Appeals did not consider the decision in this case to be inconsistent with its prior decisions, as alleged by the Government.

Petitioners then filed their petition for a writ of certiorari, which was granted and is now before this Court.

Summary of Argument.

Briefly, respondent contends that the judgment of the Court of Appeals for the District of Columbia Circuit, dismissing the Government's petition for review for lack of jurisdiction, should be affirmed for the following reasons:

I. Section 403(c) of the Renegotiation Act, 50 U. S. C. App. §1191(c), which confers upon the Tax Court "exclu-

sive jurisdiction, by order, to finally determine the amount, if any, of" an aggrieved contractor's alleged excessive profits, specifically provides that "such determination [of the Tax Court] shall not be reviewed or redetermined by any court or agency." This Court held in *Macauley* v. *Waterman S. S. Corp.*, 327 U. S. 540, that the aforesaid "exclusive jurisdiction" of the Tax Court includes the power to decide questions of coverage, "for a decision as to what are and are not negotiable contracts is an essential part in determining the amount of a contractor's excessive profits."

Since the Act explicitly prohibits any direct judicial review of such determinations of the Tax Court, the Government's petition for a direct review by the Court of Appeals of the basic question of coverage raised by respondent in this case was correctly dismissed by the Court of Appeals, for lack of jurisdiction.

II. The legislative history of the Renegotiation Act shows a clear intent on the part of Congress to endow the Tax Court with final authority to decide all questions of fact and law which may arise during the course of a renegotiation proceeding, and it intentionally made no provision for a direct review of the Tax Court's decisions.

III. While this Court has never squarely decided whether and under what circumstances, if any, decisions by the Tax Court of such "questions of coverage" may be subject to direct judicial review, it did recognize in *Aircraft & Diesel Equipment Corp.* v. *Hirsch*, 331 U. S. 752, that Congress clearly "intended to endow the Tax Court's decisions with a very large degree of finality." It has been specifically held by two courts of appeals, moreover, that decisions of the Tax Court in respect to questions of coverage are not subject to direct judicial review.

In *French* v. *War Contracts Price Adjustment Board*, 182 F. 2d 560, the Court of Appeals for the Ninth Circuit upheld *the contention made by the Government* in that case that such decisions of the Tax Court are not subject to direct judicial review under any circumstances. In the District of Columbia Circuit the "finality clause" of the Renegotiation Act has also been construed to prohibit direct review of any decision by the Tax Court, except in respect to rulings of the Tax Court on "constitutional" or "jurisdictional" questions. *U. S. Electrical Motors* v. *Jones*, 153 F. 2d 134; *Psaty & Fuhrman* v. *Stimson*, 182 F. 2d 985; *Lowell Wool By-Products Co.* v. *War Contracts Price Adjustment Board*, 192 F. 2d 405; *Knu-Vise, Inc.* v. *War Contracts Price Adjustment Board*, 195 F. 2d 198.

The decision of the Court of Appeals in this case, therefore, is not in conflict with any decision of this Court or with the rulings of the aforesaid courts of appeals with respect to questions of coverage.

IV. The petitioners' brief fails to sustain their contention that the judgment of the Court of Appeals should be reversed, and their proposed rule of reviewability would be in direct conflict with the "finality clause" of the Renegotiation Act.

V. The judgment of the Court of Appeals should be affirmed.

I.

THE RENEGOTIATION ACT PROHIBITS ANY DIRECT REVIEW OR REDETERMINATION OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW MADE BY THE TAX COURT IN THIS CASE.

(a) *Introduction.*

The ultimate question to be decided by this Court is whether the Government's petition for a review of the Tax Court's determinations of fact and law relevant to the coverage issue in this case was properly dismissed by the Court of Appeals. To decide that question, however, it is first necessary to decide whether, as a matter of law, determinations of the Tax Court in respect to *coverage* issues may be reviewed or redetermined by *any* court or agency. If not, the judgment of the Court of Appeals was obviously correct and must be affirmed.

A subsidiary question, to be considered only if this Court first decides that such determinations of the Tax Court are subject to review or redetermination, would be whether they may be reviewed or redetermined, upon the petition of the Government, by the United States Court of Appeals for the District of Columbia Circuit.

In this first point it will be shown that the determinations made by the Tax Court *in this case* are not subject to review or redetermination by *any* court or agency

(b) *The Provisions of the Act.*

Section 403(c)(1) of the Renegotiation Act, as originally passed by Congress, provided that whenever, in the opinion of the "Secretary" of one of the "Departments" named in the Act, the profits realized or likely to be

realized from any contract with such a department, or from any subcontract thereunder, may be excessive, the Secretary is "authorized and directed to require the contractor or subcontractor to renegotiate the contract price;" and no provision was made for a review or redetermination of the Secretary's determinations. Later, however, Congress recognized that the unrestricted powers thus conferred upon the Secretaries of the named Departments might well be abused. Accordingly, in the Renegotiation Act of 1943, Congress provided for a "*de novo*" redetermination by the Tax Court, upon the petition of an "aggrieved contractor," of a Secretary's unilateral determinations (50 U. S. C. App. §1191(e)).

By Section 403(e) of the Renegotiation Act of 1943, which was made applicable to renegotiation proceedings commenced under authority of either the 1942 Act or the 1943 Act, it was provided that any contractor or subcontractor aggrieved by an order of a "Secretary," or of the newly created War Contracts Price Adjustment Board, determining the amount of excessive profits received or accrued by such contractor or subcontractor, might within ninety days file a petition with the Tax Court for a redetermination thereof. The statute further provided that:

> Upon such filing, such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency.

This language might have been construed to limit the Tax Court's jurisdiction to a redetermination of only the monetary "amount" of a contractor's excessive profits,

tions and by introducing the compulsion of finality at every stage unless each succeeding one is taken as commanded."

In *Lichter* v. *United States*, 334 U. S. 742 (1947), the case in which this Court first upheld the constitutionality of the Renegotiation Act, the Court again held that the Tax Court has exclusive jurisdiction to "finally determine" questions of coverage arising under the Renegotiation Act, questions as to the amount of excessive profits adjudged to be due from the contractors, and questions as to other comparable issues, all of which the Court found to be within the jurisdiction of the Tax Court, upon the filing of a timely "petition for a redetermination of excessive profits, if any."

In view of these decisions, it is apparent that there is no conflict between the decision of the Court of Appeals in this case and the opinions expressed by this Court in respect to the "finality clause" of the statute.

The Government purports to find an inconsistency between the decision of the Court of Appeals in this case and certain prior decisions of the same Court in other renegotiation cases. The fact is, however, that the decision in this case followed and is wholly consistent with the lower court's prior decisions holding that it may not and will not review questions of coverage decided by the Tax Court in cases arising under the Renegotiation Acts.

As noted in the decision below, the Court of Appeals for the District of Columbia Circuit has held several times that in renegotiation cases it may review directly decisions of the Tax Court only in respect to "jurisdictional" and "constitutional" questions. Thus, in *U. S. Electrical Motors* v. *Jones*, 153 F. 2d 134, the case in which the lower court first held that it had limited jurisdiction to review directly decisions of the Tax Court in renegotiation cases, the court said (p. 136):

and to preclude any redetermination of the Secretary's determinations of fact and law in respect to questions of coverage. If so construed, there might be some merit to the proposal made by the Government in this case, that the "finality clause" of the Act should be held applicable only to such monetary redeterminations. But, such a literal construction of the language was expressly rejected by this Court in *Macauley* v. *Waterman S. S. Corp.*, 327 U. S. 540. There, in an opinion by Mr. Justice Black, the Court said (pp. 544-545):

> Section 403(e)(1) of the Act provides that the Tax Court "shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits * * *." Contrary to respondent's contention that this language limits the Tax Court's jurisdiction so as not to include the power to decide questions of coverage, we think the language shows that the Tax Court has such power. For a decision as to what are and are not negotiable contracts is an essential part in determining the amount of a contractor's excessive profits. The legislative history of the Renegotiation Act, moreover, shows that Congress intended the Tax Court to have exclusive jurisdiction to decide questions of fact and law, which latter include the issue raised here of whether the contracts in question are subject to the Act. In order to grant the injunction sought the District Court would have to decide this issue in the first instance. Whether it ever can do so or not, it cannot now decide questions of coverage when the administrative agencies authorized to do so have not yet made their determination. Here, just as in the *Myers* case, the administrative process, far from being exhausted, had hardly begun. The District Court consequently was correct in holding that it lacked jurisdiction to act.

> "Respondents [the Government] argue that the Renegotiation Act forbids judicial review of any act of the Tax Court in a renegotiation case. The Act does not so read. It very carefully says the Tax Court shall have exclusive jurisdiction to determine the amount of excessive profits. It leaves untouched, by direct reference or otherwise, the remaining content of Section 1141(a) of the Internal Revenue Code. We think, therefore, that *the statute places exclusive and unreviewable jurisdiction in the Tax Court to determine the amount of excessive profits, including questions of both law and fact in such determination*, but that a ruling upon *the jurisdiction of the Tax Court* is untouched by that provision and, therefore, remains reviewable by this court. It would, we think, require clear language to indicate that Congress intended that any tribunal should have unreviewable authority to determine its own jurisdiction."

It is unnecessary to decide now whether the Court of Appeals was correct in holding "that a ruling upon the jurisdiction of the Tax Court • • • remains reviewable by this Court." The present case does not involve any such ruling by the Tax Court in respect to the extent of its own "exclusive jurisdiction, by order, to finally determine the amount" of an aggrieved contractor's excessive profits. Moreover, this Court has held on several occasions that the Tax Court has such jurisdiction. The significance of this Court of Appeals' decision is that it held, as respondent contends here, "*that the statute places exclusive and unreviewable jurisdiction* in the Tax Court to determine *the amount* of excessive profits, *including questions* of *both law and fact* in such determination."

In a subsequent case, decided after this Court decided *Macauley* v. *Waterman*, the Court of Appeals more specifi-

Then, about a year later, in *Aircraft & Diesel Equipment Corp.* v. *Hirsch,* 331 U. S. 752, this Court said in an opinion by Mr. Justice Rutledge (p. 755):

> In one other case, *Macauley* v. *Waterman S. S. Corp.,* 327 U. S. 540, constitutionality was not involved, but coverage of the Renegotiation Acts was put in issue. The suit was brought in a District Court for a declaratory judgment and to restrain further renegotiation proceedings affecting the specified contracts. *The contractor had not sought a decision on coverage from the Tax Court. We held that the Tax Court has power to decide such questions in the proceedings authorized by §403(e)(1) of the Second Renegotiation Act.* Hence, under the authority of *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41, the complaint in the *Waterman* case also was held rightly to have been dismissed, in this instance for the plaintiff's failure to exhaust its administrative remedy. (Italics supplied.)

Thus, so far as the issues in this case are concerned, it has already been decided by this Court that under the provisions of Section 403(e) of the Act the Tax Court had "exclusive jurisdiction, by order, to finally determine" all coverage questions submitted to it, including the basic issue of whether respondent's Red Sea charter was *in fact* a "contract with a Department," subject to renegotiation under authority of Section 403(c)(1) of the 1942 Act. That being so, it is necessary for this Court to decide now only whether the Tax Court's redetermination of that basic question of coverage was final and binding upon the Government, or whether it is subject to further direct judicial review by the United States Court of Appeals for the District of Columbia Circuit, upon the petition of the Government.

cally defined what constituted "a ruling upon the jurisdiction of the Tax Court." In *Lowell Wool By-Products Co.* v. *War Contracts Price Adjustment Board,* 192 F. 2d 405, the Court said (p. 407):

> "We think that a question whether a certain contract is within those to be renegotiated is a question of coverage, but that a question whether the Board has any power whatever over a particular company, apart from the nature of its contracts, is a question of jurisdiction."

Again, for the purposes of this case, it is unnecessary to decide whether the distinction made by the Court of Appeals in the *Lowell* case is entirely correct. It is sufficient that the Court held "*that a question whether a certain contract is within those to be renegotiated is a question of coverage,*" and, therefore, under the decision of this Court in *Macauley* v. *Waterman,* clearly within the exclusive and unreviewable jurisdiction of the Tax Court.

In other cases, the Court of Appeals has undertaken to decide whether certain disputed issues were questions of "coverage" or questions of "jurisdiction." The Government contends here that some of those decisions are "inconsistent" with the decision in this case. We do not believe so, but the other cases are not before the Court in this proceeding, and the fact remains, that the Court of Appeals has consistently ruled that, if a petition for review does not present any "constitutional" or "jurisdictional" question, it will be dismissed by the Court for lack of jurisdiction, *Psaty & Fuhrman* v. *Stimson,* 182 F. 2d 985. Likewise, the Court of Appeals has never undertaken to review as a "question of jurisdiction" the issue raised here of whether a certain contract is subject to the Act.

But, even if there were any inconsistency between the decisions of the Court of Appeals, the fact that the entire

(c) *The Finality of Tax Court Determinations.*

The answer to the question, we submit, is provided by the unqualified language of the Act. Section 403(e) provides, in the clearest language possible, that: "Upon such filing, such court shall have exclusive jurisdiction, by order, *to finally determine the amount,* if any, of such excessive profits received or accrued by the contractor or subcontractor, *and such determination shall not be reviewed or redetermined by any court or agency.*"

The Government concedes that a determination of the Tax Court in respect to the monetary amount of a contractor's excessive profits is not subject to review or redetermination by any court or agency, because of the above-quoted language, and we agree. The Government denies, however, that the same "finality" should be accorded to the subsidiary findings of fact and conclusions of law in respect to "coverage issues," which the Tax Court is obliged to make in every case in order to redetermine the monetary amount of a contractor's excessive profits, if any.

The Government's position is patently illogical. Since this Court held in *Macauley* v. *Waterman* that a determination of the so-called "coverage issues" is "an essential part in determining the [monetary] amount of a contractor's excessive profits," and since the Government concedes that the Tax Court's determination in respect to the monetary amount of a contractor's excessive profits is not subject to review or redetermination, it necessarily follows that the subsidiary determinations of the Tax Court in respect to the coverage issues are likewise not subject to review or redetermination. It would be clearly erroneous and illogical to construe the "finality clause" of the Act as authorizing a review of the Tax Court's determinations of fact and law in respect to the "coverage issues" but as prohibiting, in

Court sitting *en banc* (only Chief Judge Stephens being absent) refused to grant a rehearing *en banc* of its decision in this case, indicates that the entire Court was satisfied that the decision in this case was correct. Hence, so far as the narrow issue in this case is concerned, the law of the District of Columbia Circuit has been settled by the action of the Court itself.

Nevertheless, petitioners assert in their brief (p. 14) that certain statements have since been made from the bench during the course of subsequent arguments, indicating disagreement with the limited scope of review recognized in the instant case. Petitioners do not specify what statements were made, nor by whom they were made. Obviously, therefore, respondent is in no position either to challenge petitioners' interpretation of the statements or to deny that they were made. It is interesting to note, however, that according to petitioners' footnote 11, at the bottom of page 14, the four judges who heard one or more of the oral arguments in the cases mentioned were Judges Edgerton, Miller, Bazelon and Fahy, each of whom joined in the Court's order denying a rehearing of the case *en banc* (R. 341). It is only reasonable to assume, therefore, that whoever reported the statements must have misinterpreted them. In any case, of course, such statements are wholly irrelevant to a determination of the issues in this case.

The rule adopted in the Ninth Circuit, in *French* v. *War Contracts Price Adjustment Board,* 182 F. 2d 560, is even more favorable to the respondent's contention that the Court of Appeals correctly dismissed the Government's petition for a review in this case. In that decision, the Court of Appeals for the Ninth Circuit applied the "finality

the same case, a review of its determination as to the monetary amount of the excessive profits, which would be necessarily based in part upon the Tax Court's determination of the coverage issues.

In short, it seems clear that the explicit language of the statute precludes a direct review or redetermination of Tax Court decisions in respect to the coverage issues submitted to it.

II.

THE CLEAR WORDING OF THE STATUTE PROHIBITING REVIEW OF THE TAX COURT'S REDETERMINATION IS SUPPORTED BY THE LEGISLATIVE HISTORY.

In *Aircraft & Diesel Equipment Corp.* v. *Hirsch*, 331 U. S. 752, this Court noted "that Congress intended to endow the Tax Court's decisions with a very large degree of finality, as appears from the very terms of §403(e)(1), from the whole structure of the Act, and from the legislative history." Nevertheless, petitioners have devoted a considerable portion of their brief to arguing that the legislative history of the Renegotiation Act of 1943, as well as that of subsequent renegotiation statutes, lends support to the proposition that Congress intended, or must have intended, some sort of appellate review of the Tax Court's final determination, albeit the statute states that "such determination shall not be reviewed or redetermined by any court or agency".

It is submitted, however, that a careful examination of all that is quoted from the Congressional hearings, reports and debates on the bill, as well as of other legislative material not quoted in petitioners' brief, leads to exactly

clause" of the Renegotiation Act literally and, *upholding the contention made by the Government in that case,* dismissed a petition for a review of a Tax Court decision wherein an aggrieved contractor alleged that the services for which he was paid were not covered by the Act. The Court said (p. 561):

> "We think the Act prohibits the review absolutely because, (1) the Act affirmatively so provides, (2) if it does not so provide there is no provision in the Act for a review, (3) there is nothing in the provisions of the Tax Court statute which authorizes review or appeal of renegotiation cases from the Tax Court or any other court to the United States Courts of Appeals, (4) there is no general statute authorizing such review."

Therefore, although there is a conflict between the decisions of the Court of Appeals for the District of Columbia Circuit and that of the Ninth Circuit in respect to the direct reviewability of *constitutional* and *jurisdictional* questions, both courts agree that the "finality clause" of the Act precludes any direct review by a court of appeals of *coverage* questions.

In view of the foregoing, it seems quite clear that the decision of the Court of Appeals in this case is not inconsistent with any decision of this Court or with any decision of the lower court in respect to the question of whether there is any direct judicial review of "coverage issues."

The decision below, moreover, is in accord with the interpretation usually accorded by the courts to "finality" provisions of other statutes. For example, in *James F. Waters, Inc.* v. *C. I. R.*, 160 F. 2d 596 (9th Cir., 1947) and *Colonial Amusement Co. of Philadelphia* v. *C. I. R.*, 173 F. 2d 568 (3rd Cir., 1949), it was held that the "finality clause" of Section 732(c) of the Internal Revenue Code, 26 U. S. C.

the opposite conclusion. It would appear from what Congressional expression there is that Congress intended precisely what the act says—the Tax Court was to have exclusive jurisdiction, by order, to finally determine the amount, if any, of excessive profits, and this final determination of the Tax Court was not to be subject to review.

All the legislative history that we have been able to find on the subject supports the view that under the 1943 Act Congress intended only the Tax Court, on petition of an aggrieved contractor, to review the action of the departmental board, and that no further appeal or review beyond this Tax Court redetermination was contemplated. Indeed, the idea of further appellate review was suggested and rejected in the course of Congressional action.

It must be remembered that the 1942 Act provided for no review or redetermination whatsoever. As stated before the Congressional Committees, it may have been possible under the 1942 Act to collaterally attack a departmental board's final determination in the courts on constitutional grounds (although there was no general agreement as to this), but certainly there was no provision for direct appeal. That was what Sec. 403(c) of the 1943 amendment to the Act was designed to supply, and in its wisdom Congress decided to confine the appeal to a *de novo* proceeding in Tax Court, but it did not intend the appellate procedure to go any further.

The first evidence of intent appears in the Report of the Committee on Ways and Means on H. R. 3687, H. Report No. 871, 78th Congress, 1st Session, at pp. 57, 58, where it says:

> "The (tax) court is given exclusive jurisdiction to determine the amount of the excessive profits or

§732, precludes any judicial review of Tax Court decisions arising under Sections 711, 721 and 722 of the Code. A similar decision was rendered by the Court of Appeals for the Second Circuit in *George Kemp Real Estate Co.* v. *C. I. R.*, 182 F. 2d 847 (2nd Cir., 1950). In each of those cases, it was held that the general power of the courts of appeals to review Tax Court determinations in tax cases, conferred by Section 1141 of the Internal Revenue Code (26 U. S. C. §1141), was subordinate to the "finality clause" in Section 732(c).

Other cases of like effect are *Calderon* v. *Tobin*, 187 F. 2d 514 (C. A., D. C., 1951), certiorari denied 341 U. S. 935, where the finality clause contained in the Federal Employees' Compensation Act, 5 U. S. C. 793, was held to bar any judicial review of the Secretary's determinations; *Barnett* v. *Hines*, 105 F. 2d 96 (C. A., D. C., 1939), certiorari denied 308 U. S. 573 and *Peyton* v. *United States*, 100 F. Supp. 823 (Ct. Cl., 1951), certiorari denied 343 U. S. 909, where the finality provisions of the Veterans' Relief Act, 38 U. S. C. 705, were held to bar any judicial review. Similarly, this Court held in *Wilson & Co.* v. *United States*, 311 U. S. 704, that the finality clause of Section 601(a) of Title IV of the Revenue Act of 1936, which provided for refunds of certain processing and floor stock taxes, precluded a judicial review of the Commissioner's determinations.

Many other decisions to the same effect and involving various types of finality clauses might be cited here, but, in the final analysis, they all stand for the general proposition that administrative determinations are not subject to *direct* review by the courts when Congress has provided that such determinations shall not be subject to review or redetermination by any court or agency. Petitioners can hardly challenge this general proposition of law, for in most

> the fair price, as the case may be, and its determination is not subject to review or redetermination by any court or agency".

When the bill was being debated on the Floor of the House, Congressman Jenkins, a member of the Ways and Means Committee, in supporting a change in the 1942 law so as to provide Tax Court review of the departmental board's determination, stated:

> "* * * To this end we provide a court review. Most of those who complained were anxious for a court review of some kind. What we provide in this bill is not perfect but it is a great step in the right direction.
>
> * * * * * *
>
> "For fear that the Board will not take the fair and conciliatory attitude that the task requires, the committee has provided in this bill that the aggrieved party may carry his case to the Court of Tax Appeals for a review. This court will then hear the matter *de novo*, as the lawyers would say. That means the tax court would hear it all over from the beginning" 89 Cong. Rec. 9934.

So also Congressman Vinson, Chairman of the Naval Affairs Committee and a staunch advocate of renegotiation legislation, in discussing the necessity of some sort of appellate review of the departmental board's determination, said:

> "For the very reason that the present law is not clear as to the existence of a right of appeal to the courts, both the Ways and Means Committee and our committee have recommended the insertion of a provision in the law specifically conferring the right of appeal. We only differ as to the kind of an appeal that should be allowed. The Ways and Means

cases the Government is the party who insists on maintaining the sanctity of "finality clauses," just as they have been doing up to the present time in respect to the "finality clause" of the Renegotiation Act.

IV.

PETITIONERS' BRIEF FAILS TO SUSTAIN THEIR CONCLUSION THAT THE JUDGMENT OF THE COURT OF APPEALS IN THIS CASE SHOULD BE REVERSED.

Although petitioners' brief concludes with a prayer that the judgment of the Court of Appeals in this case be reversed and the case remanded to that court for a ruling as to the "correctness" of the Tax Court's decision, it is noteworthy that petitioners do not even suggest that the judgment of the Court of Appeals was erroneous as a matter of law. Instead, petitioners argue only that the judgment below was not "required" by any decision of this Court; that it is "inconsistent" with prior decisions of the Court of Appeals for the District of Columbia Circuit; and, that this Court should now interpret the "finality clause" of the Act as granting to the Court of Appeals for the District of Columbia Circuit *exclusive jurisdiction* to review directly all decisions by the Tax Court in respect to "constitutional" and "jurisdiction" questions.

Apart from the fact that these arguments do not appear to be relevant to the issue in this case of whether the judgment of the Court of Appeals was correct as a matter of law, they are wholly without merit because they do not even tend to prove that the decision below was erroneous.

We agree, of course, that the judgment of the Court of Appeals was not "required" by this Court's decision in

> Committee has recommended that review of the Board's decisions shall lie in a *de novo* proceeding before the Tax Court. While I am of the opinion that an entirely new hearing by the Tax Court, after the Board has already tried the case and handed down its decision, is wasteful of both public funds and manpower, the important thing is to assure some form of judicial review of the departmental decision. So long as judicial review of some sort is provided for, I am not disposed to quarrel over the form that that review will take. Accordingly, I urge that the Ways and Means Committee's recommendation in this respect be adopted" 89 Cong. Rec. 9936.

It is apparent from the above that these sponsors of the legislation in the House were concerned only with giving an aggrieved contractor some sort of review of the departmental board's determination. They agreed to place such a review exclusively in the Tax Court in a *de novo* proceeding. They made the Tax Court's order final and not subject to review. There is nothing in the report or debate to indicate that they intended going any further.

This intention of Congress to limit review of the departmental determination to a *de novo* proceeding in the Tax Court is confirmed by a discussion that occurred in 1945, when a one year extension of the 1943 Act was being considered, between Mr. Alvord, representing the United States Chamber of Commerce, and certain members of the Ways and Means Committee who had actively participated in the passage of the 1943 Act. *Hearings Before the Committee on Ways and Means on H. R. 2628*, 79 Cong., 1st Sess., pp. 174-194. In the course of his statement Mr. Alvord said (*Id.* at p. 175):

> "The Revenue Act of 1943 states specifically that the provisions relating to review by the appropriate

Macauley v. *Waterman*, standing alone. But, because the Court of Appeals had repeatedly held in prior decisions that it lacked jurisdiction to review directly decisions of the Tax Court except in respect to "constitutional" and "jurisdictional" questions, and because the decision of this Court in *Macauley* v. *Waterman* held that the basic issue in this case involves a "coverage issue", clearly within the jurisdiction of the Tax Court, the Court of Appeals was virtually "required" to dismiss the Government's petition for review for lack of jurisdiction. Indeed, a contrary decision would have been clearly erroneous and in conflict with the prior rulings of the Court, and it would have been necessary for the Court to ignore this Court's ruling in *Macauley* v. *Waterman*.

So far as petitioners' second argument is concerned, *i. e.*, that the decision of the Court of Appeals is inconsistent with prior decisions of the same court in other cases, we have already shown in Point III, *supra*, that there is in fact no such inconsistency between this and the prior decisions.

Petitioners' third argument, which is really a plea for a judicial amendment of the "finality clause" in the Renegotiation Act, likewise fails to sustain petitioners' demand that the judgment of the Court of Appeals be reversed. Indeed, it comes very close to being an admission that the judgment below was correct. But, even if this Court were to adopt as its own the rule of the District of Columbia Circuit, that decisions of the Tax Court may be reviewed directly in respect to "constitutional" and "jurisdictional" questions, it would still be necessary to affirm the judgment of the Court of Appeals, because the basic issue involved here is neither a "constitutional" nor a "jurisdictional" question. *Macauley* v. *Waterman* determined it is a "question of coverage," clearly within the jurisdiction of the Tax Court.

> circuit court of appeals of a decision of The Tax Court was not applied to the decision on a renegotiated case. This question was settled in conference. I think some of the conferees thought otherwise, but the statute is very specific, as I read it, that there is no appeal on a question of law from The Tax Court of the United States."

Congressman Lynch commented as follows (*Id.* at p. 183):

> "And it was the intention of the committee at that time that The Tax Court should be the final arbiter; should consider all the facts *de novo* and pass on the facts and on the law as an appeals court deciding upon the appeal that might be taken from what was up to that time apparently the final determination of the agency board; * * *"

Later he added the following (*Id.* at p. 185):

> "We gave you more than you really wanted when we permitted a hearing *de novo* in The Tax Court, which was to be, as I recall it, the final determination in order that these appeals might not drag out over the years."

Congressman Jenkins agreed by saying (*Id.* at p. 187):

> "Yes. We gave to the War Department, which is not a judicial agency, and we gave to the Navy Department, the right to go back and recast a contract and review it and renegotiate it. It was purely an administrative matter and rather than let it rest with them, and inasmuch as it had a tax phase, we decided that The Tax Court would have the last say on it."

It is important to note that, despite Mr. Alvord's urging, Congress did not see fit to provide for any direct review

For that reason, petitioners are obliged to propose further that this Court also hold that the term "jurisdictional question" must be deemed to include all "non-constitutional" questions, including "questions of coverage" such as the one involved herein. Thus, the only non-reviewable questions would be those pertaining directly to the monetary amount of the contractor's excessive profits and, of course, any "constitutional" questions. Obviously, such a decision would almost nullify the "finality clause" of the Renegotiation Act, contrary to the legislative intent of Congress as disclosed in the legislative history of the Renegotiation Act. (Point II, *supra.*)

We respectfully submit, therefore, that petitioners have failed to offer any sound legal reasons why the judgment of the Court of Appeals in this case should be reversed.

Finally, because this case does not involve any ruling by the Tax Court in respect to its own jurisdiction, it is unnecessary for this Court even to consider at this time whether the rule of the District of Columbia Circuit, which permits a limited direct review of Tax Court decisions in renegotiation cases, is a correct ruling. Nor is there any need to approve or disapprove the more rigid rule of the Ninth Circuit, which does not permit a direct appeal to the Court of Appeals on any question decided by the Tax Court. For the purposes of the present case, it is sufficient that the rule in both Circuits precludes a review of Tax Court determinations with respect to "questions of coverage."

beyond the Tax Court. It is plain that Congress in 1944, and again in 1945, considered the advisability of further appeal and decided against it.

When the 1943 bill reached the Senate side, the Senate Committee substituted the Court of Claims for the Tax Court, but made no other essential change in the provisions of Sec. 403(e). The finality clause remained as before. The report of the Finance Committee contains the following statement:

> "The jurisdiction of the court finally to determine the amount, if any, of excessive profits, is to be exclusive under the committee bill, as was the case with the jurisdiction of The Tax Court under the House bill, and that determination is not to be reviewed or redetermined by any court or agency." S. Rept. No. 627, 78 Cong., 1st Sess., p. 110.

In the course of the Senate debate, Senator Truman offered an amendment which proposed to strike the following language:

> "Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency",

and to insert in lieu thereof:

> "Such petition shall constitute the exclusive method of review of such order and upon the filing thereof such court shall have exclusive jurisdiction by order finally to determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor; *such determination shall be subject to appellate review as in the case of other decisions*

V.

THE JUDGMENT OF THE COURT OF APPEALS WAS CORRECT AND IT SHOULD BE AFFIRMED BY THIS COURT.

Respectfully submitted,

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